

The Texas Commission on Environmental Quality (commission) adopts the repeal of §§294.1 - 294.4, 294.10 - 294.12, and 294.60 - 294.63. Sections 294.1 - 294.4, 294.10 - 294.12, and 294.60 - 294.63 are adopted *without changes* as published in the November 21, 2003 issue of the *Texas Register* (28 TexReg 10423).

#### BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED REPEALS

Senate Bill 2, §2.22, 77th Legislature, 2001, transferred the authority to designate groundwater management areas from the commission to the Texas Water Development Board (TWDB). Texas Water Code (TWC), §35.004, provides that the TWDB shall designate all the management areas in the state by September 1, 2003. The TWDB has designated these areas. Three groundwater management areas were designated by the commission under TWC, Chapter 52 and one management area was designated under TWC, Chapter 35, which was renumbered from former Chapter 52. The commission adopts the repeal of these groundwater management areas because they are no longer valid and to avoid confusion with the TWDB groundwater management area designations.

#### SECTION BY SECTION DISCUSSION

Chapter 294 has been renamed to “Priority Groundwater Management Areas” to accurately reflect the content of the chapter.

Subchapters A, B, and F are repealed because the authority to designate groundwater management areas was transferred to the TWDB. Subchapter A, Carrizo-Wilcox Aquifer, contains §294.1, Definitions; §294.2, Designation of Management Area 3 of the Carrizo-Wilcox Aquifer; §294.3,

Designation of Management Area 4 of the Carrizo-Wilcox Aquifer; and §294.4, Description of Boundaries. Subchapter B, Antlers Sand Aquifer, contains §294.10, Definitions; §294.11, Designation of Union Hill Underground Water Management Area of the Antlers Sand Aquifer; and §294.12, Description of Boundaries. Subchapter F, East Texas Groundwater Management Area, contains §294.60, Purpose and Scope; §294.61, Definitions; §294.62, Designation of East Texas Groundwater Management Area (ETGMA); and §294.63, Boundaries.

A quadrennial review concurrent to this rulemaking readopts Subchapter D, Priority Groundwater Management Areas and Subchapter E, Designation of Priority Groundwater Management Areas. (Rule Project Number 2003-059-294-WT).

#### FINAL REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the adopted rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the rulemaking is not subject to §2001.0225 because it does not meet the criteria for a "major environmental rule" as set out in that statute. The adopted repeal would not meet the definition of major environmental rule because it would not adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The adopted rulemaking would repeal management area designations made by the commission under repealed law. The TWDB currently designates management areas.

The adopted repeals also do not meet the criteria for a “major environmental rule” as set out in the Texas Government Code, because §2001.0225 only applies to a major environmental rule, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law. The repeals are adopted under a specific state law, TWC, §35.004, which provides that the TWDB currently designates management areas. The repeals do not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program. The repeals do not go beyond specific state and federal law, but implement the law by repealing the TCEQ designated management areas. Therefore, the commission concludes that a regulatory analysis is not required in this instance because the adopted repeals do not meet the definition of major environmental rule and do not trigger any of the four criteria in Texas Government Code, §2001.0225.

#### TAKINGS IMPACT ASSESSMENT

The commission performed an assessment of the adopted rulemaking in accordance with Texas Government Code, §2007.043. The specific purpose of the adopted rulemaking is to repeal management area designations made by the commission based on repealed law. Current law requires the TWDB to create management areas, and the TWDB has done so. The adopted repeals will substantially advance this stated purpose by repealing the management area designations made by the

commission. These repeals do not impact real property because groundwater management area designation has no regulatory effect. The commission's assessment indicates that Texas Government Code, Chapter 2007, does not apply to the repeals because this is an action that does not adversely affect real property.

#### CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the adopted rulemaking and found that the adopted rulemaking is neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11, nor will it affect any action/authorization identified in §505.11. Therefore, the adopted rulemaking is not subject to the Texas Coastal Management Program.

#### RESPONSE TO COMMENTS

The comment period closed on December 22, 2003. No comments were received.

## SUBCHAPTER A: CARRIZO-WILCOX AQUIFER

### §§294.1 - 294.4

#### STATUTORY AUTHORITY

The repeals are adopted under TWC, §5.102, which grants the commission the authority to carry out its powers under the TWC; §5.103, which provides the commission the authority to adopt any rules necessary to carry out its powers and duties under this code and other laws of this state; §5.105, which requires the commission to establish and approve all general policy of the commission by rule; and §5.120, which requires the commission to administer the law for the maximum conservation and protection of the environment and natural resources of the state.

§294.1. Definitions.

§294.2. Designation of Management Area 3 of the Carrizo-Wilcox Aquifer.

§294.3. Designation of Management Area 4 of the Carrizo-Wilcox Aquifer.

§294.4. Description of Boundaries.

## SUBCHAPTER B: ANTLERS SAND AQUIFER

### §§294.10 - 294.12

#### STATUTORY AUTHORITY

The repeals are adopted under TWC, §5.102, which grants the commission the authority to carry out its powers under the TWC; §5.103, which provides the commission the authority to adopt any rules necessary to carry out its powers and duties under this code and other laws of this state; §5.105, which requires the commission to establish and approve all general policy of the commission by rule; and §5.120, which requires the commission to administer the law for the maximum conservation and protection of the environment and natural resources of the state.

§294.10. Definitions.

§294.11. Designation of Union Hill Underground Water Management Area of the Antlers Sand Aquifer.

§294.12. Description of Boundaries.

SUBCHAPTER F: EAST TEXAS GROUNDWATER MANAGEMENT AREA

§§294.60 - 294.63

STATUTORY AUTHORITY

The repeals are adopted under TWC, §5.102, which grants the commission the authority to carry out its powers under the TWC; §5.103, which provides the commission the authority to adopt any rules necessary to carry out its powers and duties under this code and other laws of this state; §5.105, which requires the commission to establish and approve all general policy of the commission by rule; and §5.120, which requires the commission to administer the law for the maximum conservation and protection of the environment and natural resources of the state.

§294.60. Purpose and Scope.

§294.61. Definitions.

§294.62. Designation of East Texas Groundwater Management Area (ETGMA).

§294.63. Boundaries.